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**To:** Microsoft ATR  
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**Subject:** Comments on the Microsoft Proposed Final Judgement

I am Software Project Manager and Chief Architect of Biomedicom, Inc., a company that develops software for medical devices. The following represents my own personal opinion and does represent Biomedicom in any way.

I am hereby submitting comments to the Proposed Final Judgement in the Microsoft anti-trust litigation, in accordance with the Tunney Act.

There are major flaws in the Proposed Final Judgement that prevent it from being a remedy to Microsoft's abuse of its monopolistic power in the software industry.

Sections III(J)2 and III(D) of the Judgement provide non-Microsoft entities access to proprietary Microsoft information. This information is critically important for being able to produce software that is compatible with existing Microsoft technologies currently exclusively controlled by Microsoft. However, the only entities that the Judgement empowers to receive such information are exclusively "business" or "commercial" entities.

By implicitly excluding open source software developed under the auspices of non-profit organizations, the Judgement is strengthening rather than weakening Microsoft's ability to abuse its monopoly power. The vast number of businesses, government agencies, and academic research groups that currently depend on one or more open source software packages will be even more vulnerable than before to Microsoft monopoly abuse if the Judgement is accepted in its current formulation.

The Judgement must be changed to allow non-profit, government, and academic entities to access the proprietary information and use it in open source software. A mechanism must be provided through which these entities can reveal just that amount of information required to be compatible with open source and free software licenses currently in widespread use, such as the Free Software

Foundation's "General Public License". This critical topic was completely overlooked in the Judgement.

In addition, the Judgement gives Microsoft the power to decide which entities meet the eligibility criteria for gaining access to this information. This makes it easy for Microsoft to interpret the language a way that excludes its most important competitors. The Judgement must be changed to define more clearly which entities are entitled to receive proprietary information from Microsoft so that the large majority of reasonable applicants will be able to receive immediate approval without dispute.

Furthermore, the wording of the Judgement appears to put the burden of proof on the entity requesting the information to show that it is eligible. That will lead to delays in receiving information that will devalue the information of most of its value given the fast-changing nature of the software industry. Even if the entity is given currently up-to-date information at the end of a long appeal process, the information will be not be useful if the product that required it is no longer relevant.

Many software packages in extensive use are based on open source, and are developed by geographically dispersed teams of developers under the auspices of non-profit organizations. Although these applications themselves are not developed for profit, many are essential to the operation of business, academic, and government entities that develop software themselves or are dependent on software.

Some examples are:

- o The Apache web server, the most widely-used software for Internet web sites, with Microsoft's Internet Information Server in second place.
- o The Linux operating system, an alternative to Microsoft Windows with over 5 million users according to estimates.
- o The GNU C/C++ compiler, the second most widely used creator of software in the C and C++ programming languages, second to Microsoft's Visual C++.
- o The Perl programming language, a widely used language

for developing web sites, together with Microsoft's VBScript  
Sun's Java.

o The Mozilla web browser, which is the basis for the current  
Netscape and AOL browsers.

There are hundreds of other important examples.

Taken together, this group of software packages represents  
the single most important alternative to monolithic  
Microsoft-dominated software. For many software products,  
including those specifically mentioned above except Perl,  
there is no other product strong enough to compete with  
Microsoft even given full benefit of the remedies mentioned  
in the Judgement.

Therefore, by excluding from the remedies the  
only viable alternatives to Microsoft products, and by  
removing Microsoft's fear of future anti-trust action,  
the Judgement as currently formulated enables Microsoft  
to abuse its monopoly position even more than ever before.

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